

**MINUTES
of the
SECOND MEETING
of the
CAPITAL OUTLAY SUBCOMMITTEE
of the
NEW MEXICO LEGISLATIVE COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE**

**July 28, 2008
Room 307, State Capitol
Santa Fe**

The second meeting of the Capital Outlay Subcommittee of the New Mexico Legislative Council and the Legislative Finance Committee for 2008 was called to order at 1:45 p.m. on July 28, 2008 by Speaker of the House Ben Lujan in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Ben Lujan, Co-Chair
Sen. Timothy Z. Jennings, Co-Chair
Sen. Carlos R. Cisneros
Sen. Kent L. Cravens
Sen. Carroll H. Leavell
Rep. W. Ken Martinez
Sen. Leonard Lee Rawson
Rep. Henry Kiki Saavedra
Sen. Michael S. Sanchez
Rep. Edward C. Sandoval
Rep. Thomas C. Taylor
Rep. Jeannette O. Wallace
Rep. Teresa A. Zanetti

Absent

Sen. Dianna J. Duran
Rep. Brian K. Moore
Sen. John Arthur Smith

Advisory Members

Rep. Janice E. Arnold-Jones
Sen. Stuart Ingle
Rep. Rhonda S. King
Sen. H. Diane Snyder

Staff

David Abbey, Director, Legislative Finance Committee (LFC)
Ric Gaudet, Legislative Council Service (LCS)
Renée Gregorio, Capital Outlay, LCS
Linda Kehoe, Capital Outlay Coordinator, LFC
Jeannae Leger, LFC
Tom Pollard, LCS

Paula Tackett, Director, LCS
Ralph Vincent, Consultant, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts given by meeting presenters are in the meeting file.

Monday, July 28

Water and Wastewater Projects: Partnering and Linking Planning and Funding

Deputy Secretary of Environment Jon Goldstein introduced Karen Gallegos, director of the new Water and Wastewater Infrastructure Development Division (WWIDD) of the Department of Environment (NMED). Ms. Gallegos then described to the subcommittee new developments in the uniform funding application (UFA) process the department uses to develop water and wastewater projects for communities. The UFA is now web-based, which will allow much easier access by applying communities, said Ms. Gallegos.

The process for funding water and wastewater projects is a comprehensive planning, engineering, regulatory and financing one. The first step in the process is for a community to submit a UFA, which initially only requires basic information from the community. Then the project goes through a prescreening process, which identifies the myriad requirements for the project before it can proceed. The division assists communities with the prescreening process, said Ms. Gallegos. Once a project has gone through the prescreening process, the project gets entered into the division's database, which allows it to proceed. The next steps involve developing an assistance schedule and five-year plan, preparing preliminary engineering reports and environmental information documents, if necessary, performing detailed technical review of the project and recommending project funding sources.

Representative Arnold-Jones asked who the contractor was for the development of the web-based UFA. Mr. Goldstein said that the entire project was done in-house, by department staff. He also clarified that the new system is running in test mode, but has not yet been released for public access.

Representative Wallace asked if water rights issues are addressed by the UFA. Ms. Gallegos said that they are part of the process, and the Office of the State Engineer is linked into the UFA.

Senator Snyder asked if the UFA was based on the work in previous years of the Interagency Task Force, which also developed a UFA. Richard Rose, chief of the Construction Programs Bureau of the WWIDD, said that the existing paper version of the UFA was the starting point for the new UFA. He said that entities can apply for a project without needing to

know all the technical details of the project initially. NMED staff will provide the entity with technical assistance for the entire process of developing a project. He said his bureau was allocated several new staff positions dedicated to managing projects. In addition, he said that entities are being encouraged to apply for funding for a specific planned project, rather than applying for general funding and then trying to figure out how to spend it.

Representative Wallace asked if entities still need to fill out a capital outlay request form from the legislature in order to receive funding. Mr. Goldstein said that as the UFA is currently designed, legislative funding of projects is still one of many funding sources and is not affected by the new system.

Senator Jennings asked if the NMED is enforcing stricter arsenic standards than in other states. Mr. Goldstein said that the department is forced to comply with federal Environmental Protection Agency regulations and has had no choice in implementing its own new strict regulations. He said that the NMED is currently working with the Village of Ruidoso to comply with the new standards. Robert Apodaca, director, Local Government Division (LGD) of the Department of Finance and Administration (DFA), said that his division will present ideas for funding that very expensive project to the legislature soon.

Senator Sanchez asked if other New Mexico municipalities are able to comply with the new arsenic standards. Mr. Goldstein said that the NMED has worked extensively with municipalities to meet standards and to apply for waivers. Senator Sanchez asked for a list of municipalities that currently are not in compliance.

Representative King asked if the WWIDD is coordinating with the Water Trust Board. Mr. Rose said that the board recently decided to use the new UFA for projects it is considering. Representative King then said that many small communities have difficulty meeting all the hurdles set up by the federal and state governments. She said that many communities feel that they are unable to raise their utility rates any higher in order to fund a water project and view the legislature as their only hope of funding projects.

Coordinating the Local Infrastructure Capital Improvement Plan Process with the Legislative Funding Process

Mr. Apodaca and Linda Kehoe, Legislative Finance Committee (LFC), presented some ideas to the subcommittee about how the infrastructure capital improvement plan (ICIP) process could be better coordinated with the legislative funding process. Mr. Apodaca began by describing the state and local ICIP processes. Each state agency is required to submit a five-year plan each year describing its infrastructure needs based on its programmatic functions. Local governments follow the same process, but are not required to submit ICIPs. The ICIP process works to create a broad planning effort in conjunction with other state planning processes, including those of the Public School Facilities Authority (PSFA), Higher Education Department, Aging and Long-Term Services Department, Department of Transportation and General Services Department.

The ICIP process encourages governments to plan for future needs; allows coordination of funding of projects between local governments and state agencies; communicates information about capital infrastructure needs to the legislature and executive; and includes inventory, goals, time frames, costs, including operating expenses, justifications and implementation plans for projects. Any governmental entity that is a political subdivision of the state can use the ICIP process, which gets published each December for policymakers to use.

Mr. Apodaca suggested that the legislature should consider enacting a law that requires local governments to use the ICIP process, which could reduce the funding of unplanned projects. Mr. Apodaca said that requiring local governments to plan infrastructure projects could result in the state receiving an "AAA" rating from bonding agencies, which would reduce the cost of financing projects significantly.

Other improvements that the state should consider making, said Mr. Apodaca, include generating internal monitoring reports documenting progress on all of the state's capital projects; reducing the number of small capital appropriations, which tend only to partially fund projects; reducing the number of capital appropriations that are dedicated to private or nonprofit organizations; developing a statewide consolidated report on deferred maintenance problems; and further tightening restrictions on the reauthorization of capital appropriations.

Ms. Kehoe presented the subcommittee with a report of local capital outlay projects that are slated to revert soon. Many of the projects have little or no apparent activity, she said. She identified 640 projects that will revert at the end of fiscal year 2009 and that have not had any drawdown of funds yet. This can be partially attributed to the practice of appropriating money for projects that are not fully planned or that do not go through the ICIP process.

Other problems arise when an agency plans for the infrastructure cost of a facility, but not for the operations and maintenance costs. State agencies are required to submit operational budgets for infrastructure, but many do not. For example, the budget for the scientific laboratory being constructed in Albuquerque did not estimate operational costs. The Department of Health will surely request extra operational funding once the facility is open, she said.

Mr. Apodaca said that most state agencies treat the ICIP process seriously, but some do not. There also needs to be some sort of process, perhaps similar to the PSFA system, to prioritize state capital projects, he said.

Representative Martinez asked about the problem of governments encumbering appropriations as a method of keeping the money for years after the scheduled reversion date. Mr. Apodaca said that the 2008 capital appropriations bill has language that reverts all money 90 days after the reversion date, whether that money has been encumbered or not. Ms. Kehoe clarified that in order for money to be encumbered, there needs to be a valid third party binding obligation.

Representative Arnold-Jones asked about several Albuquerque Public Schools (APS)

projects for which she says APS submitted invoices but has not received reimbursement from the Public Education Department (PED). Antonio Ortiz of the PED said that he will look into that issue. He also said that many school districts delay submitting invoices for years. Mr. Apodaca said that he will work with PED staff to compile a list of projects that have expired.

Representative King asked whether current statutory language requires local governments to submit ICIPs. Ms. Kehoe said that she believes the language of Section 6-4-1 NMSA 1978 could be interpreted that way.

Senator Snyder requested that electronic versions of printed capital outlay reports be made available.

Senator Jennings said that in some communities, political concerns dictate which projects make it onto an ICIP. He also mentioned the problem of getting contractors to bid on projects that are located in remote areas of the state.

Public School Facilities Authority Funding Process

In order to provide the subcommittee with a current example of an organized system of planning, financing, constructing and maintaining capital assets, Bob Gorrell and Tim Berry of the PSFA described how infrastructure for New Mexico public schools is managed. Although the PSFA system was originally developed in response to a lawsuit alleging regional funding disparities in school construction, it could be used as a model to meet the capital needs of other areas of state and local government. The system funds school construction based on need, which is determined using standardized criteria and through master planning of the school district. Funding for school construction comes from a dedicated portion of severance tax revenue and is disbursed according to the rigorous statutory procedures detailed in the Public School Capital Outlay Act. This contrasts with other capital outlay funding methods in New Mexico, some of which are haphazard and potentially wasteful.

The school construction process in New Mexico consists of five basic parts: planning, funding, project development, construction and occupancy. Each school district wishing to construct a new school or remodel an existing school must follow the procedures set up by the PSFA and the Public School Capital Outlay Council (PSCOC). The most important parts of the process, said Mr. Gorrell, are the master planning phase and planning for deferred maintenance. Otherwise, construction of new schools could be a waste of money and lead to even higher capital costs.

In 2007, the PSCOC funded, and the PSFA oversaw the development of, more than \$135 million in new standards-based projects; \$44 million to fund existing projects (based on the idea of funding only the amount necessary for each phase of the project); \$6.5 million in lease assistance; and \$3.7 million in energy efficiency, master planning and facility demolition projects.

Speaker Lujan asked about change orders, which tend to increase the cost of projects.

Mr. Gorrell said that with the close supervision of the PSFA for each project, it has reduced the ability of contractors to make multiple change orders. He said the PSCOC also funds projects in phases, which allows project costs to be more accurately planned. The PSFA has begun purchasing futures contracts on building materials, which further reduces costs.

Speaker Lujan asked about required bonding for contractors on public school projects. Mr. Gorrell said that architects need to carry a \$1 million bond, and construction managers carry five percent of a project's maximum allowable construction cost.

Representative Martinez said that the public school construction funding system has been a huge success, and he commended the PSFA and PSCOC for their work.

The minutes from the June 17, 2008 meeting of the subcommittee were approved without changes.

There being no further business, the subcommittee adjourned at 4:20 p.m.